

IN THE COURT OF JUDICIAL MAGISTRATE CLASS I,
BONGAIGAON

PRESENT: SYEDA FARIDA AFZAL ZINNAT, AJS

G.R CASE NO: 836/2013

STATE OF ASSAM VERSUS AZIMUDDIN SEIKH AND OTHERS

U/S 447/435/294/34 IPC

FOR THE PROSECUTION: MR. R.C.MAHATO, LEARNED ASST. PP

FOR THE DEFENCE: MR.P. BAIDYA, MISS. M. RAY LEARNED
ADVOCATES

EVIDENCE RECORDED ON: 20/8/2014, 17/9/2014

ARGUMENTS HEARD ON: 17/9/2014

JUDGMENT DELIVERED ON: 23/9/2014

JUDGMENT

1. On 17/7/2013 Msst. Kulsum Bewa W/O Moilan Seikh of village Pub Ankorbari, P.S. Dhaligaon, District Chirang, lodged complaint petition in Court against her sons alleging that on 11/6/2013 her sons namely Azimuddin Seikh, Karim Ali Seikh, Kabil Seikh and Kazimuddin Seikh set fire to her house with intention to kill her and to forcefully possess the land standing in her name. It was also alleged in the complaint petition that on 15/7/2013 her above mentioned sons forcefully ploughed her and when her daughter resisted them they assaulted her and her daughter and disrobed them and at last they were saved by neighbours. Upon getting the complaint petition the same was forwarded to Dhaligaon Police Station for registering and investigating the case and accordingly Dhaligaon P.S Case No. 201/13 U/S 436/354/323/447/34 IPC was registered. After completion of investigation Police submitted Charge Sheet against the accused persons named above u/s 447/435/294/34 IPC.

2. After receiving the charge sheet learned C.J.M, Bongaigaon took cognizance and transferred the case to my file for disposal.
3. Summonses were issued and upon appearance the accused persons were furnished with the copies of the relevant documents of the case in accordance with section 207 Cr.P.C. Upon perusal of the Case Record a prima facie case U/Ss 447/435/294/34 I.P.C was found to be well established against the accused persons above named. Accordingly the particulars of the offences U/Ss 447/435/294/34 I.P.C were explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. During the course of trial as many as four witnesses were examined by the prosecution. The accused Azimuddin Seikh was examined under section 313 Cr.P.C. He pleaded not guilty and declined to adduce any evidence. The examination of the other accused persons U/S 313 Cr.P.C was dispensed with as there is no incriminating material against them.
5. In order to determine whether the accused persons are liable as charged I framed the following point for determination:
 1. Whether the accused persons on 11/6/2013 at about 8 am at village Pub Ankorbari under Dhaligaon P.S., in furtherance of their common interest, committed mischief by fire intending thereby to or knowing it to be likely that they will thereby cause damage to the house of the informant to the amount of Rs. 100/- or upwards and thereby committed an offence punishable U/S 435 IPC?
 2. Whether the accused persons in furtherance of their common interest on 15/7/2013 at about 9 am at village Pub Ankorbari under Dhaligaon P.S, committed criminal trespass by entering into and ploughing the land of the informant and thereby committed an offence punishable under section 447 IPC?
 3. Whether the accused person on 15/7/2013 at about 9 am at village Pub Ankorbari under Dhaligaon P.S, in furtherance of their common intention, did any obscene act in any public

place or uttered any obscene songs, ballad or words in or near any public place to the annoyance of others and thereby committed an offence punishable under section 294 IPC?

Discussion on Evidence, Decision and Reasons thereof:

6. PW1 Kulsum Bewa stated in her evidence that Azimuddin chased her away from her house and set fire to her house. According to her the occurrence took place only a month and half ago. She also stated that no one occupied her land.
7. During her cross examination PW1 stated that she has filed this case to get back her land
8. PW2 Maleka Begum stated that the occurrence took place on 11/6/2013 at about 9 am. That, she was in the field serving tea to her husband when her mother went to the field and began crying and upon enquiring her she told that Azimuddin set fire to her house and chased her away. That, at this she went to her mother's house and Azimuddin assaulted her and after that the accused persons evicted her and her mother from their land.
9. During cross examination PW2 stated that her mother is living with her since last one year and before that she lived with her son Azimuddin. She admitted that this case has been instituted to get share of land. She also admitted that the other brothers do not stay with Azimuddin. PW2 also admitted that they did not lodge ejarah at police station for setting the house on fire. PW2 admitted that she has filed three other cases against the accused persons other than this case. She also stated that she took treatment from doctor because of the assault but she has not submitted any documents with the complaint.
10. PW3 Md. Hasen Ali stated that PW2 Maleka Begum is the wife of his nephew. According to him the occurrence took place a year ago. That, his house is situated at a distance of half kilometre from the house of accused Azimuddin. That, he was tethering his cow in his backyard at about 8 am on the day of the occurrence

when he heard commotion in the house of Azimuddin. That, he did not go to Azimuddin's house but he heard that Azimuddin had set fire to his boundary fencing.

11. During cross examination PW3 stated that he does not know if Azimuddin had quarrelled with his mother and that the other accused persons do not stay with Azimuddin.
12. PW4 Sohrab Ali is the husband of PW2 Maleka Begum and the brother-in-law of the accused persons. He stated that the occurrence took place about a year ago at about 8 am. Later on he stated that he was nearby and he saw Azimuddin burn the bamboo fencing of his boundary.
13. During cross examination PW4 admitted that there is dispute regarding land between the accused persons and his wife and mother-in-law.
14. A careful appreciation of the evidence on record shows that there is nothing on record which suggests that the accused persons trespassed into the land of the informant and ploughed on her land. Thus, the accused persons cannot be held liable u/s 447 IPC.
15. The PWs did not state anything from which it could be gathered that the accused persons abused the PW1 and PW2 with obscene words. Hence it is found that the accused persons are not guilty of the offence u/s 294 IPC.
16. It is seen from the evidence on record that the other accused persons do not live with accused Azimuddin. It could be gathered from the evidence of PW1 and PW2 that PW1 i.e. the complainant used to stay with accused Azimuddin and from past one year she is staying with PW2 i.e. her daughter. Although PW1 and PW2 stated that Azimuddin set fire to the house of the complainant but PW2 also admitted that they did not approach police when the house was set on fire. Further PW3 and PW4 stated that Azimuddin set fire to the boundary fencing. Therefore, from the evidence on record it could be gathered that the accused persons did not set fire to the house of the complainant and as such they cannot be held guilty u/s 435 IPC.

17. It is to be noted that the complaint was lodged on 17/7/2013 i.e. nearly a month from the alleged incident of arson. The complainant and her daughter did not lodge any F.I.R in police Station rather they waited for a month and lodged a complaint case. they admitted in their cross examination that they have filed this case only to get back their land which alone is sufficient to get the idea that the complaint petition is the afterthought of a false story which was concocted in the wrong notion that the complainant and her daughter would thereby get shares in land.
18. From the above discussion I am of the opinion that there is not an iota of evidence against the accused persons. Hence they are held not guilty and accordingly acquitted.

ORDER

The accused person namely Azimuddin Seikh, Kazimudin Seikh, Kabil Seikh and Karim Seikh are acquitted of the offences charged with. Bail Bonds are extended to a period of six months. Given under the hand and seal of this Court on this the 23rd day of September 201.

SYEDA FARIDA AFZAL ZINNAT

JMFC, BONGAIGAON

APPENDIX:

List of Exhibits: Nil

List of Witnesses:

- 1) PW1: Kulsum Bewa
- 2) PW2: Maleka Begum
- 3) PW3: Hasen Ali
- 4) PW4: Sohrab Ali
- 5) PW5: Tarini Kanta Ray